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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,156

09/23/2005

Stephane Demellier

GSQZ 2 00070

1554

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7590

09/08/2008

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EXAMINER

WALCZAK, DAVID J

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

09/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/524,156	Applicant(s) DEMELLIER ET AL.	
	Examiner David J. Walczak	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 and 14 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 12 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/8/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities:

The specification is replete with grammatical and syntax errors that should be corrected, i.e.:

On page 2, line 22, "D-D and C-C" should be --C-C and D-D--;

On page 3, line 6, after "is arranged", --in a-- should be inserted;

On page 3, line 12, after "(H3)", --of-- should be inserted;

On page 3, line 14, "in question" should be replaced with --H1 and H2-- so as to avoid confusion as to which height are being referred; and

On page 5, line 9, "am" should be --an--.

The Applicant should review the entire specification and correct any other minor informalities that may exist.

Appropriate correction is required.

The specification is further objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

Correction of the following is required:

The terms/limitations "setting the limits for movement" (claim 10), "detent" (claim 14) and "storing groove" (claim 14) do not have antecedent basis in the specification.

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The Applicant should review all of the claims to ensure that the terms defined therein have a proper antecedent basis in the specification.

Claim Objections

Claims 1, 2 and 8 are objected to because of the following informalities:

In regard to claim 1, on line 5, it appears that "to receive stick" should be --to receive a lipstick--;

In regard to claim 2, on line 7, it appears that "the means of guidance" should be --a first means of guidance-- in order to avoid confusion as to which means of guidance (the means of guidance 20 on base 2 or the "first" means of guidance 41a, 41b on slide 4) is being referred (see page 3, lines 27-28). Appropriate correction is required.

In regard to claim 8, as discussed above, on line 3, "the means of guiding" should be --the first means of guidance--.

Claim Rejections - 35 USC § 112

Claims 5, 6 and 8 and are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 5, an antecedent basis for "the means of guidance" and "the means of centering" have not been defined.

In regard to claim 6, an antecedent basis for "the guiding grooves" has not been defined.

In regard to claim 8, an antecedent basis for "the means of centering" has not been defined.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuglsang-Madsen (U.S. Re. 27,022).

In regard to claim 1, Fuglsang-Madsen discloses a rotating case comprised of a base 12, 18 mounted for axial rotation around a tubular body 16 (the upper portion of element 18 rotates around body 16) and a slide 10 adapted to receive a lipstick movably mounted in an interior of the body 16 wherein the base includes a means of guidance 36 for inducing the slide to move in axial translation upon axial rotation of the base relative to the tubular body 16 and wherein such axial rotation further induces the slide to rotate (when the base is rotated and the tubular body is held stationary, the slide will both rotate and translate axially) and axially translate simultaneously relative to the tubular body and wherein the height of the slide 10 and means for guidance 36 are both less than an external height of the base.

In regard to claim 2, the means of guidance 36 is defined by a rectilinear guiding groove which extends longitudinally along an inside tube (portion 30 of the base defines

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the inside tube as this tube is positioned inside of portion 18 of the base) which extends concentrically in an interior of the base (interior of element 18) and wherein the groove cooperates in a running relationship to guidance means 28.

In regard to claim 3, the slide 10 includes a “means of centering” 28 which contacts the internal surface of the tubular body 16.

In regard to claim 4, the means of centering 28 includes two means (see Figure 2) which are regularly spaced on the exterior surface of an upper end of the slide (see Figure 1).

In regard to claim 5, the means for guidance includes 36 (as discussed above) which receive the means for centering 28 when the slide is retracted into the base.

In regard to claim 6, the means for centering 28 are received in the guiding grooves to guide the slide along the interior of the base.

In regard to claim 7, the means for centering will contact an upper edge of the tubular body (the upper portion of track 45) to limit the travel of the slide.

In regard to claim 8, the means of guidance 36 has “larger dimensions” than storage grooves 45 that receive the means for centering (i.e., viewing Figure 1, groove 36 extends above the top of track 45 and thereby is considered to have “larger dimensions” than track 45).

In regard to claim 12, a cap 20 is attached to an upper end of the tubular body.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuglsang-Madsen.

Although the Fuglsang-Madsen reference does not disclose that the tubular body and slide are transparent, the Examiner takes official notice that such dispensers are commonly formed from transparent materials in order to enable a user to view the contents thereof. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the various components of the Fuglsang-Madsen device can be made from a transparent material in order to enable a user to view the contents of the dispenser.

Allowable Subject Matter

Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13 and 14 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David J. Walczak
Primary Examiner
Art Unit 3751

DJW
9/4/08

/David J. Walczak/
Primary Examiner, Art Unit 3751